GEMENCHEH ENTERPRISES SDN BHD A

v.

HOCK SENG MINING SDN BHD

HIGH COURT MALAYA, MELAKA B
ABDUL KARIM JALIL JC
[ORIGINATING SUMMONS NO: 24 NCvC-251-5-2012]
18 FEBRUARY 2013

LAND LAW: *Caveat - Caveatable interest - Removal of private caveat - Whether beneficial interest to land acquired - Principles of competing equities - Whether plaintiff aggrieved party - Onus of prove - National Land Code, ss. 323 & 327* C

LAND LAW: *Caveat - Wrongful lodgment - Whether caveator had caveatable interest - Whether financial transaction constitute caveatable interest - Whether caveat ought to be removed* D

Aikpoint Development Sdn Bhd ('Aikpoint') were the registered owners of a plot of land. Aikpoint and the plaintiff entered into a sale and purchase agreement ('S&P') of the said land at the E purchase price of RM906,750. The plaintiff had subsequently paid a 10% deposit to Aikpoint. On 3 July 1999, Aikpoint informed the plaintiff that they were no longer interested in executing the S&P and subsequently returned the 10% deposit. This was not accepted by the plaintiff. The plaintiff filed a civil suit against F Aikpoint and was granted specific performance for the execution of the S&P. Despite the court orders and the repeated letters by the plaintiff, the solicitors for Aikpoint failed to execute the S&P. In the meantime, one Mr Chung Joon Ling ('CJL') a director and shareholder of Aikpoint had, on 24 November 1999, allegedly sold G the said land to the defendant who paid a consideration of RM380,288.38 for the purchase of 70% of the said land. The defendant further lodged a private caveat on the said land. The plaintiff's case was that the defendant had no caveatable interest to justify the entry of a caveat under s. 323 of the National Land H Code ('NLC') and therefore, the caveat entered by the defendant ought to be removed. The defendant, on the other hand, contended that the plaintiff was not an aggrieved person within the meaning of s. 327 of the NLC and had no *locus standi* to justify the removal of the caveat since the plaintiff was not the I registered or beneficial owner of the land which, at all times, remained with Aikpoint. The issues that arose before the court

were: (i) whether the plaintiff had *locus standi* and beneficial interest over the land; (ii) whether the plaintiff bore the onus of proof to show that they were aggrieved by the existence of the caveat; (iii) whether the defendant had caveatable interest; and (iv) whether the lodging of the caveat was wrongful and ought to be removed.

Held (allowing plaintiff's application with costs):

(1) The plaintiff had pursued their legal and equitable rights diligently. It would be a travesty of justice to say that all the actions and orders given to the plaintiff by the court had no legal effect to the plaintiff's right and interest on the land. In this circumstances, the plaintiff had acquired a beneficial interest and ownership on the land. Aikpoint was merely a bare trustee. Thus, the plaintiff had the *locus standi* to remove the caveat as the plaintiff's status was directly relevant to the resolution of the dispute in the present application. (paras 10 & 11)

(2) By the very nature of the unclosed category of the "aggrieved person", the plaintiff did fall within the category of "aggrieved person". The plaintiff could not register their interest because of the defendant's caveat. The defendant's caveat had adversely effected the plaintiff's legal right and interest over the land and such lodgment was wrong. The plaintiff's position could be viewed from the principle of competing equities. The plaintiff was clearly an aggrieved person and had discharged its onus of showing that the defendant had no caveatable interest and the lodging of the caveat thereof was wrong and misconceived. (paras 8, 10, 14, 15 & 16)

(3) It was clear that the purchase price was for all intent and purpose a financial transaction between the defendant and CJL and not for the sale and purchase of the land with Aikpoint. Therefore, it is trite law that interest in the nature of financial transaction, profit, refund of deposit or an *in personam* claim were not enforceable against the land and cannot constitute to caveatable interest. (para 14)

(4) There was no agreement on the alleged sale and purchase of the said land and the issue of the sale and purchase was not raised in the trial for specific performance between the plaintiff and Aikpoint. The non-action tilted the negativity against the

defendant. The whole affair was dubious in the circumstances and did not amount to a caveatable interest. Hence, the lodgment of the caveat was wrongful. The plaintiff had a better equity, *albeit* no caveat lodged on its behalf. (paras 12, 13 & 16)

Case(s) referred to:

Affin Bank Bhd v. Dato' Mohamed Embong [2002] 1 CLJ 202 HC ***(refd)***

AmBank (M) Bhd v. Angkutan Permai (M) Sdn Bhd & Anor [2012] 1 LNS 84 HC ***(refd)***

Bachan Singh v. Mahinder Kaur & Ors [1956] 1 LNS 14 HC ***(foll)***

Borneo Housing Mortgage Finance Berhad v. Time Engineering Berhad (Formerly known as Time Engineering Sdn Bhd) [1996] 2 CLJ 561 FC ***(foll)***

Elizabeth Magdeline Buxton & As Trustee v. Packaging Specialists Sdn Bhd [1986] 2 CLJ 241; [1986] CLJ (Rep) 337 HC ***(foll)***

Eng Mee Yong & Ors v. Letchumanan [1979] 1 LNS 18 PC ***(foll)***

Fadason Holdings v. Soh Kay Meng [2009] 1 LNS 1513 HC ***(refd)***

Ganding Maju Sdn Bhd v. KS Property Development Sdn Bhd; Affin - ACF Finance Bhd (Intervener) [2008] 7 CLJ 227 HC ***(foll)***

Haroon Guriaman v. Nik Mah Nik Mat & Anor [1951] 1 LNS 24 HC ***(refd)***

Hew Sook Ying v. Hiw Tin Hee [1992] 3 CLJ 1325; [1992] 1 CLJ (Rep) 120 SC ***(refd)***

Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng @ Tan Tien Chi & Anor [1995] 3 CLJ 520 CA ***(refd)***

Mok Yong Kong & Anor v. Mok Yong Chuan [2002] 3 CLJ 615 CA ***(refd)***

Murugappa Chettiar Lakshmanan (Wasi Tunggal Harta Pesaka MRL Murugappa Chettiar, Simati) v. Lee Teck Mook [1995] 2 CLJ 545 CA ***(refd)***

Nazmi Holdings (M) Sdn Bhd v. Noman Ahmed Hafiz Jannat Hussain, KL/OS No. 2-24NCvC-2661-10-2011 (Unreported) ***(refd)***

North Plaza Sdn Bhd v. United Securities Sdn Bhd [2010] 1 CLJ 470 CA ***(refd)***

Wong Siew Choong Sdn Bhd v. Anvest Corporation Sdn Bhd [2004] 4 CLJ 89 FC ***(foll)***

Wu Shu Chen & Anor v. Raja Zainal Abidin Raja Hussin [1997] 3 CLJ 854 CA ***(foll)***

Legislation referred to:

National Land Code, ss. 323, 327(1)

For the plaintiff - Sugandra Rao Naidu; M/s SK Khoo & Assocs
For the defendant - Lawrence Tan Boon Twee; M/s Lawrence Tan & Assocs

Reported by Sandra Gabriel

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JUDGMENT

Abdul Karim Jalil JC:

[1] The plaintiff by this originating summons primarily applies for the removal of a private caveat (No. 450/2010) lodged by the B defendant against the land held under GRN 52770, Lot 4896, Mukim Selandar, in the District of Jasin, Melaka (Formerly known as GRN 4438, Lot 406, Mukim of Selandar, in the District of Jasin, Melaka), (the subject land).

C **[2]** At the outset, there are two applications before this court for determination in connection with the same subject land. In addition to the present application to remove the defendant's private caveat, the plaintiff has also assailed the registered owner's, Aikpoint Development Sdn Bhd ('Aikpoint'), application in the D originating summons No. 24 NCvC-209-12-2011 (first application) for the release of a sum amounting to RM340,000 which the government had paid as compensation sums for the compulsory acquisition of a certain part of the subject land. At the start of this proceeding, both parties had agreed that both applications E could be heard together. After hearing both parties, this court has on 28 November 2012 allowed the registered owner Aikpoint's application to have the compensation money released to them. As for this application, this court, has also allowed the plaintiff's application to remove the defendant's private caveat. Both F Aikpoint, in the first application, and the defendant, in the present application, now appeal against the said decisions.

Salient Background Facts

G **[3]** The salient facts leading to the above applications are as follows:

(a) Aikpoint is the registered owners of Lot 406, Geran No. 4438, Mukim Selandar, in the District of Jasin, Melaka (now known as Lot 4896, Geran No. 52770, Mukim H Selandar, in the District of Jasin, Melaka).

(b) On 20 April 1999 and 21 April 1999, Aikpoint and the plaintiff had agreed on the sale and purchase of the subject land at the purchase price of RM906,750. The plaintiff had paid a I 10% deposit for the purchase of the subject land amounting to RM90,675.

(c) On 8 May 1999, Aikpoint through their solicitors had requested for fair copies of the sale and purchase agreement for execution. The plaintiff's solicitors, on 11 May 1999, thereafter submitted four fair copies of the sale and purchase agreement duly signed by the plaintiff to Aikpoint's solicitors for their execution. A B

(d) On 3 July 1999, Aikpoint, however, through their solicitors had informed the plaintiff's solicitors that they no longer wished to execute the fair copies of the sale and purchase agreement and returned the 10% deposit of the purchase price to the plaintiff's solicitors. This was not accepted by the plaintiff and the deposit payment was returned to Aikpoint's solicitors. C

(e) On 22 February 2000, the plaintiff filed Civil Suit No. 22-21-2000 against Aikpoint applying for specific performance of the sale and purchase agreement of the said land. D

(f) On 20 October 2005 and upon completion of the full trial, the Melaka High Court (YA Low Hop Bing J, as he then was) held *inter alia* granting the plaintiff an order for specific performance of the fair copy of the sale and purchase agreement entered into between Aikpoint and the plaintiff; that the plaintiff was the beneficial owners of the land, and Aikpoint as a trustee for the plaintiff with regard to the said land. E F

(g) On 4 February 2010, the Court of Appeal dismissed Aikpoint's appeal and affirmed the High Court order dated 20 October 2005.

(h) On 28 June 2010, the Federal Court dismissed Aikpoint's application for leave to appeal to the Federal Court. G

(i) On 21 July 2010, 29 July 2010 and 6 August 2010, and despite the court orders directing specific performance of the fair copy of the sale and purchase agreement and repeated letters by the plaintiff's solicitors, Aikpoint failed to sign and execute the fair copies of the sale and purchase agreement. H

(j) On 6 September 2011, the plaintiff filed an application *via* an Originating Summons No. 24NCvC-05-09/2011 seeking for further orders and to give effect to the specific performance order which Aikpoint has failed to comply. On 10 October 2011, the Melaka High Court allowed the plaintiff's application for the said consequential orders. I

(k) On 15 December 2011, the High Court rejected Aikpoint's application for a stay of execution pending the Court of Appeal decision.

(l) On 16 February 2012, the Court of Appeal had struck out Aikpoint's appeal against the High Court decision given on 10 October 2011.

(m) The Deputy Registrar of the High Court Melaka, Puan Radzilawatee binti Abdul Rahman, had duly signed and executed the fair sale and purchase agreement between the plaintiff and Aikpoint, Form 14A and all relevant instruments consistent with cl. (b) of the said consequential orders.

(n) Despite all the above actions, the plaintiff still fails to have the eventful transfer of the said land to its name because of the existence of the defendant's private caveat.

(o) It is apparent that not within the plaintiff's knowledge, Mr Chung Joon Ling @ Cheong Yoon Ming, as one of Aikpoint's directors, had on 24 November 1999 allegedly sold the said land to the defendant. In consideration of the alleged sale, the defendant had (*vide* RHB cheque No. 244118) paid him the sum of RM380,288.38 for the purchase of 70% of the subject land.

(p) On 1 February 2010, the defendant lodged the concerned private caveat, the subject matter of the present plaintiff's application.

The Parties' Contentions

[4] In brief, it is the plaintiff's case that the defendant does not have a caveatable interest to justify the entry of the caveat under s. 323 of the National Land Code ('the Code'). As the caveator, the burden lies with the defendant to show that they have a caveatable interest and that the caveat should remain to protect their interest in the subject land. Following the three stages approach as enunciated in the *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng @ Tan Tien Chi & Anor* [1995] 3 CLJ 520, the defendant has miserably failed to prove or bypass any of the hurdles or stages. The plaintiff on the other hand has shown that they have, by the several court orders, acquired the beneficial ownership or interest of the subject land. The plaintiff has also relied on the following cases to support the above contentions: *Eng Mee Yong & Ors v. Letchumanan* [1979] 1 LNS 18; [1972] 2 MLJ 212; *Hew Sook Ying v. Hiw Tin Hee* [1992] 3 CLJ 1325;

[1992] 1 CLJ (Rep) 120; *Ambank (M) Bhd v. Angkutan Permai (M) Sdn Bhd & Anor* [2012] 1 LNS 84; *Murugappa Chettiar Lakshmanan (Wasi Tunggal Harta Pesaka MRL Murugappa Chettiar, Simati) v. Lee Teck Mook* [1995] 2 CLJ 545; [1995] 1 MLJ 782; *Mok Yong Kong & Anor v. Mok Yong Chuan* [2002] 3 CLJ 615.

[5] The defendant ghastly opposed the plaintiff's application. In brief, the defendant has assailed the plaintiff's standing in that they do not have any *locus standi* to mount this action. In the upshot, the defendant argues that the plaintiff is not an aggrieved person within the meaning of s. 327 of the Code. In this regard, the burden is on the plaintiff to prove that they are aggrieved person and that the caveat should be removed. The defendant further argues that the plaintiff is not the registered or beneficial owner of the subject land which at all time still remains with Aikpoint. In the circumstances, plaintiff is still and remained as an outsider in relation to the defendant's caveat and the subject land. In this regard, the long chequered history and all those court orders between Aikpoint and the plaintiff have nothing to do with the defendant. On the other hand, the defendant has clearly shown that they are the beneficial owner of the 70% of the subject land after paying the full purchase price to the Chung Joon Ling @ Cheong Yoon Ming, director and shareholder of Aikpoint. In support, the defendant refers to the following cases: *Fadason Holdings v. Soh Kay Meng* [2009] 1 LNS 1513; [2009] MLJU 1432; *North Plaza Sdn Bhd v. United Securities Sdn Bhd* [2010] 1 CLJ 470; [2010] 1 MLJ 631.

Issues

[6] There are two primary issues before the court. The issues are: whether the plaintiff is an aggrieved person and whether the defendant's caveat should be removed as contended by learned counsel for the plaintiff, or should it remain in existence as contended by learned counsel for the defendant?

Findings Of The Court

[7] After giving my anxious consideration to both parties' arguments, written or otherwise, and after reading all the affidavits filed, I find merit in the learned plaintiff's counsel's submissions.

[8] As to the first primary issue, it is my considered view that the onus is on the plaintiff to show that they are aggrieved person within the meaning of s. 327 of the Code. Peculiar to this case,

both parties herein are not the registered owners (caveatee) of the subject land. In such a situation, the case of *Eng Mee Yong & Ors v. Letchumanan* [1979] 1 LNS 18; [1979] 2 MLJ 212 (PC) provides the following principle:

> It is otherwise when the applicant under section 327 is someone other than the caveatee (**the registered owner**). He has no registered title to rely upon as *prima facie* evidence of his interest in the land. It is for him to begin by satisfying the Court that there are sufficient grounds in fact and in law for treating him as a person claiming such interest in the land as would, if it were established, make him aggrieved by the existence of the caveat -- as per Lord Diplock at page 215. (emphasis added)

Section 327(1) of the Code provides that:

> **Any person or body aggrieved** by the existence of a private caveat may at any time apply to the court for an order for its removal, and the court (acting, if the circumstances so require, *ex parte*) may make such order on the application as it may think just. (emphasis added)

Who is then an aggrieved person under s. 327 of the Code? In *Wu Shu Chen & Anor v. Raja Zainal Abidin Raja Hussin* [1997] 3 CLJ 854, the Court of Appeal at p. 868 has this to say:

> The Code contains no definition on who is an aggrieved person. To my mind, the word "aggrieved" must be given its ordinary meaning. To be aggrieved means one is dissatisfied with or adversely affected by a wrongful act of someone. An aggrieved person is therefore a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body. **The category of aggrieved persons is never closed**. (emphasis added)

[9] As a principle of general application, the category is not closed. It cannot be gainsaid that a registered owner of a land (caveatee) is always an aggrieved person as against a caveator (whereby the onus is on the caveator to retain the caveat in the record) - *vide* generally all those cases cited in this category such as *Eng Mee Yong & Ors; Luggage Distributors (M) Sdn Bhd; Murugappa Chettiar Lakshmanan (Wasi Tunggal Harta Pesaka MRL Murugappa Chettiar, Simati) v. Lee Teck Mook*; *Wu Shu Chen & Anor; Ganding Maju Sdn Bhd v. KS Property Development Sdn Bhd; Affin - ACF Finance Bhd (Intervener)* [2008] 7 CLJ 227. The category has also been extended to non caveatee situations such as a chargee of a secured property in a foreclosure proceeding

(*Affin Bank Bhd v. Dato' Mohamed Embong* [2002] 1 CLJ 202), a successful bidder during a sale by public auction (*Nazmi Holdings (M) Sdn Bhd v. Noman Ahmed Hafiz Jannat Hussain*, KL/OS No. 2-24NCvC-2661-10-2011) (Unreported), or, a non *bona fide* purchaser for value as in the case of *North Plaza Sdn Bhd*, *supra*.

[10] From the available evidence and the chequered long history that the plaintiff has gone through in respect of the subject land with Aikpoint, I am in total agreement with the learned plaintiff's counsel's contention that the defendant's caveat has indeed adversely affected the plaintiff's legal right or interest over the subject land and such lodgment is wrong or unjustifiable in the peculiar circumstances of this case. It must seriously be noted that the plaintiff has pursued their legal and equitable rights diligently from the time Aikpoint made it sudden about turn on 3 July 1999 until to date. The plaintiff had diligently filed the aforementioned civil suit for specific performance of the sale and purchase agreement in 22 February 2000 and upon a full trial on 20 October 2005 the High Court granted the plaintiff's prayer for specific performance of the said sale and purchase agreement. Aikpoint refused to accept the decision and their appeals to the Court of Appeal and the Federal Court were categorically dismissed at all levels. Aikpoint still refused to accede and comply with all those court orders. Remarkably, the plaintiff did not take any enforcement actions for the non compliance but instead, believing in the full vigour of the court coercive power, filed another application for what is called a 'consequential orders' to give effect to all the prior orders obtained from the courts against Aikpoint. The plaintiff did obtain the consequential orders on 10 October 2011. Aikpoint, however, appealed against the said consequential orders but again they failed. Despite all that, Aikpoint stoutly refused to comply as if with impunity. Not daunted, and pursuant to the court consequential orders, the plaintiff proceeded to execute all those instruments for the eventful transfer of the subject land to them. In their affidavit, the plaintiff affirmed that the Deputy Registrar of the High Court Melaka had duly signed the fair sale and purchase agreement between the plaintiff and Aikpoint, Form 14A and all required instruments to give effect to the court orders. It is a travesty of justice to say that all those actions and orders given to the plaintiff have no legal effect as to the plaintiff's right or interest on the subject land. In the circumstances, it is my considered view that the plaintiff had acquired a beneficial interest, and I would even say that, consistent with *Borneo Housing Mortgage Finance Berhad v.*

Time Engineering Berhad (Formerly known as Time Engineering Sdn Bhd) [1996] 2 CLJ 561, *Wong Siew Choong Sdn Bhd v. Anvest Corporation Sdn Bhd* [2004] 4 CLJ 89, a beneficial ownership on the subject land and that Aikpoint, a bare trustee. Even at this stage, I would also opine that, by the very nature of the unclosed category of the "aggrieved person", the plaintiff does, and I do so find, fall within the category of "aggrieved person". At the present instant, the plaintiff cannot register their interest because of the defendant's caveat. I cannot imagine a clearer case than this!

[11] Despite the above finding, and to go further to the second limb of the meaning of the phrase aggrieved person, does the lodgment of the caveat by the defendant wrongfully done? The learned counsel for the defendant strenuously argued that the defendant has a clear caveatable interest as envisaged by s. 323 of the Code when lodging the caveat in that they had bought and paid the full purchase price on the 70% of the subject land from the said Chung Joon Ling @ Cheong Yoon Ming, a director and shareholder of Aikpoint. As strongly stated in their written submissions, they have nothing to do with the plaintiff's dispute or history with Aikpoint. As far as they are concerned, the plaintiff has no interest, legal or otherwise, in the land, and hence is not an aggrieved person under s. 327 of the Code. In short, the plaintiff has no *locus standi* to remove the caveat. As to the relevancy of the plaintiff's history with Aikpoint, I respectfully disagree with the learned counsel's submissions on this point. It is my finding that the plaintiff's status as above found is directly relevant to the resolution of the dispute between them in this application.

[12] On the wrongful lodgment of the caveat, learned counsel for the plaintiff contended that the affairs are fraught with suspicions and vagueness. Learned counsel argues that the defendant has no caveatable interest in the land because the transaction was not with Aikpoint, being a duly incorporated company, but more particularly with one Chung Joon Ling @ Cheong Yoon Ming, a shareholder of Aikpoint. It is further argued that the nature of the transaction is more financial in the sense that the so called purchase price of 70% of the subject land was in actual fact an investable sum paid to Chung Joon Ling @ Cheong Yoon Ming. This inference, as submitted by learned counsel, is warranted by the facts that there was no clear sale and purchase agreement on the alleged sale and purchase, and the nature of the payment as mentioned in the statutory declaration of the defendant's solicitor

attached to Form 19B (plaintiff's exh. TKP12, encl. 1, and, defendant exh. KSS1, encl. 4). The plaintiff also questions as to the delay in lodging the caveat and the timing is suggestive of protecting Aikpoint's interest and to defeat the court orders. The plaintiff further contends that this finding is further supported by the fact that both companies have the same business address and same director, ie, Kwa Soon Seng (exh. TKP14, encl. 1). In short the whole affair is dubious and in the circumstances, does not amount to a caveatable interest and hence the lodgment is wrongful.

[13] On this issue, I agree fully with the learned plaintiff's counsel's submission. What is the nature of the interest the defendant is protecting when they lodged the caveat? Is it in relation to the land or otherwise? It is strange that there was no agreement whatsoever on the alleged sale and purchase of the subject land. Everything revolved around this elusive person by the name of Chung Joon Ling @ Cheong Yoon Ming. The defendant seems to transact the whole affairs with this man and the timing of the transaction is so suggestive of defeating the plaintiff's claim. Even though denied as being relevant to them, this issue of sale and purchase of the subject land to the defendant was not even raised in the trial for specific performance between the plaintiff and Aikpoint in 2005. The defendant should have intervened or initiated action to uphold their rights, if true to what they claimed. Nothing was done even to date! This non action for a long time tilts negatively against the defendant. (*vide Ganding Maju Sdn Bhd v. KS Property Development Sdn Bhd; Affin-ACF Finance Bhd (Intervener)* where the delay was only four months!).

[14] The suspicion on the true nature of the alleged interest can be further discerned from the defendant's documents filed with Form 19B - (exh. KSS1, encl. 4). In the defendant's solicitor's statutory declaration affirmed on 1 February 2010 the reason for lodging the caveat is stated as follows:

> 3. The Company has paid the sum of Ringgit Malaysia Three Hundred Eighty Thousand Two Hundred Eighty-eight and cent Thirty-eight (RM380,288.38) only to Chung Joon Ling @ Cheong Yoon Ming (NRIC No. 3347964) who is the shareholder of ADSB (Aikpoint - added by me) being the purchase price of 70% of the said land. The letter of Confirmation and Cheque for the said amount are annexed hereto as the Appendix A.

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> 4. Since the Company is 70% beneficial owner of the said Lands further and to protect the Company's interest over the said Land, the Company wish to apply to enter Private Caveats against the said Land.

B It is to be noted that the payment is made to the said Chung Joon Ling @ Cheong Yoon Ming in his capacity as a shareholder of the Aikpoint. It should be noted that it was not paid to Aikpoint or on his behalf. This true nature of the interest is further explained by Chung Joon Ling @ Cheong Yoon Ming in his letter dated 24 November 1999 to the Aikpoint's Board of C Directors which is appended as a letter of confirmation in the above statutory declaration. The alleged confirmatory letter says as follows:

> D **Investment in Aikpoint Development Sdn Bhd** for Land held under Lot No. 406, PN No. 4438, Mukim Selandar, Daerah jasin, Area: 29.25 Acres
>
> The above matter refers.
>
> E In consideration of the nett sum of RM380,288.38 (70% of the sale on Lot No. 406, P.N. No. 4438, Mukim Selandar, Daerah Jasin, Area: 29.25 Acres) having received *vide* RHB cheque no. 244118, **I hereby argeed *(sic)* to discharged *(sic)* all my right and benefit of the above mentioned**.
>
> F The said sum is receivable pursuant to the **Computation described in the "Schedule I and Schedule II" attached hereto**. (emphasis added)

G The defendant through its director's affidavit, Kwa Soon Seng, (encl. 4), affirmed that the defendant bought the 70% of the subject land from the director of Aikpoint and paid the alleged purchase price to the said Chung Joon Ling @ Cheong Yoon Ming as the payee in the cheque drawn by them. From the cumulative effect of all those evidence, it is clear that the so called purchase price is for all intents and purposes a financial transaction H between the defendant and the Chung Joon Ling @ Cheong Yoon Ming, and not for the sale and purchase of the subject land with Aikpoint. It seems that the attached sch. 1 and 11 were nowhere enclosed in the defendant's affidavit. On the effect of Form 19B, it is now trite law that a caveator must be held to the grounds I he alleged in his application in Form 19B when lodging his caveat. (see: *Ganding Maju Sdn Bhd*, *supra*, and, *Wu Shu Chen & Anor*, *supra*). It is also trite law that interest in the nature of financial transaction, profit, refund of deposit or an *in personam* claim are

not enforceable against the land and cannot be caveatable interests. See *Bachan Singh v. Mahinder Kaur & Ors* [1956] 1 LNS 14; [1956] MLJ 97; *Elizabeth Magdeline Buxton & As Trustee v. Packaging Specialists Sdn Bhd* [1986] 2 CLJ 241; [1986] CLJ (Rep) 337. And, clearly in this case an investment sum or a sum in the nature of financial entitlement or mutual set off between shareholder and outside party as in the present case, does not bind the land but parties to the transaction. In this regard, the caveat lodged is clearly wrong and misconceived.

[15] Upon the above premises, the plaintiff is clearly an aggrieved person and has discharged its onus of showing that the defendant has no caveatable interest and the lodging of the caveat thereof is wrong and misconceived. On this ground alone, the plaintiff's application should be allowed.

[16] In any event, if the resolution of the issues raised in this case is to follow the three stages approach as enunciated in the *Luggage Distributors (M) Sdn Bhd*'s case, I would agree and totally adopt learned counsel's for the plaintiff written submission filed in this case. Of particular, the plaintiff could make up a clear case on a balance of convenience or justice that the caveat should be removed. As shown in the circumstances of this case, there are three parties involved in respect of the subject land *viz*, the registered owner (the caveatee), defendant (the caveator) and plaintiff (the aggrieved person). This court has weighed the interest of all in order to decide whether the caveat should remain or otherwise. Bearing in mind that the category of an aggrieved person is not closed, the present factual situation is capable of creating a good new ground for the extension of the above general rule. In addition, the plaintiffs position could also be viewed from the principles of competing equities perspective. It is my view that this approach could be an exception to the above general rule. In *Haroon Guriaman v. Nik Mah Nik Mat & Anor* [1951] 1 LNS 24; [1951] MLJ 209, Brigg J, after referring to passages from Hogg, said:

> I take the effect of these passages to be that, where competing equities arise, their relative priority *inter se* at the moment before a caveat is imposed to protect either will be determined by the ordinary rules of equity. If a caveat is then put on to protect that which has the lower priority according to such rules, it may be warned off by the person entitled to the higher priority. I think that is the position in this case, and that the better equity is Nik Mah's.

A On the assumption that there are competing equities in the present application, it is my considered view that the plaintiff has a better equity, *albeit* no caveat lodged on its behalf.

[17] In conclusion, the following is part of my decision in the B first application between the plaintiff and Aikpoint where I did mention on the present application as follows:

> 15. The above analysis has paramount implication on the Interveners' (**the plaintiff herein**) position. From the historical factual background of the case the Interveners had C diligently taken all necessary actions to conclude the contract including the obtainment of the consequential orders from the court on 10.10.2011 to give effect to the earlier order for specific performance. In the course of the hearing of this application, the learned counsel for the Interveners had D indicated that the full purchase price had been paid in full, *albeit* to the Interveners' solicitors, and that the necessary due form for the transfer and registration of the concerned land had been duly executed by the Deputy Registrar of the court as directed in the said consequential orders. The registration, however, was not successful *(sic)* executed due E the existence of a private caveat lodged by one Hock Seng Mining Sdn Bhd (a subject matter of another application where the caveat was successfully uplifted by the order of this court on the 28.11.2012, which was heard together with the present application) (**the defendant herein**). Having F regard to the view that I had taken as to the scope and application of the above general principle, and upon the effective full compliance of the court consequential orders, it is my considered view that the Interveners had acquired the beneficial ownership in the land and that the Applicants (**Aikpoint**), a bare trustee. (emphasis added)

G **[18]** In the upshot, I allow the plaintiff's application as per encl. 1 with cost of RM1,000.

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